

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

USA,
Plaintiff

vs

Case No. 1:03cv96-SJD-TSH
(Dlott, J.; Hogan, M. J.)

Wilson M. Graham, et. al.,
Defendants

REPORT AND RECOMMENDATION

This matter is before the Court on plaintiff's motion to amend the complaint to join indispensable parties. (Doc. 17). Plaintiff seeks to add Shirley Graham, wife of defendant Wilson M. Graham, and Mitchell Graham, their son, as parties defendant. Plaintiff asserts that they are indispensable because tax records show that they have done work as members of defendant Graham & Associates, providing tax advice and preparing returns for clients. While pro se defendants Wilson and Graham did not respond directly to plaintiff's motion to amend, the proposed parties defendant, Shirley and Mitchell Graham, filed pro se responses in opposition to the motion. (See Docs. 21, 22).

The Government basically alleges that Shirley and Mitchell Graham were and are employees of Graham & Associates, and as such prepared false tax returns in connection with the sale and promotion of an abusive trust scheme in which defendants Wilson Graham and Homer Richardson were involved. On November 19, 2003, this Court issued a Report & Recommendation that plaintiff's motion for preliminary injunction be granted and that Defendant Wilson Graham, as well as Graham and Associates be preliminarily enjoined from preparing income tax returns and otherwise representing clients before the IRS; from promoting the sales of abusive trusts under the name of Aegis, Heritage, or any other name, and that they be required

to provide certain documentation to the IRS concerning these activities. (Doc. 71, Report & Recommendation, p. 11). Because the proposed defendants were identified as employees of Graham & Associates, and because the Court has recommended granting the relief sought against this defendant, plaintiff's motion to amend is moot.

While leave to amend is to be liberally granted in most instances, Fed. R. Civ. P. 15(a), in this case, at this stage of the litigation, the Court finds that amendment would be essentially futile. *See Brooks v. Celeste*, 39 F.3d 125, 130 (6th Cir. 1994). Moreover, given that this Court has already conducted the preliminary injunction hearing and recommended the relief sought against defendants Wilson Graham and Graham & Associates, for whom the proposed defendants were alleged to have worked, to add a new party at this time would likely prejudice the opposing parties. *See Foman v. Davis*, 371 U.S. 178, 182 (1969); *Janikowski v. Bendix Corp.*, 823 F.2d 945, 951-52 (6th Cir. 1987).

IT IS THEREFORE RECOMMENDED THAT plaintiff's motion to amend (Doc. 17) be denied as moot.

s/Timothy S. Hogan
Timothy S. Hogan
United States Magistrate Judge

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January 22, 2004

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NOTICE

Attached hereto is the Report and Recommended decision of the Honorable Timothy S. Hogan, United States Magistrate Judge, which was filed on 1/23/2004. Any party may object to the Magistrate's findings, recommendations, and report within (10) days after being served with a copy thereof or further appeal is waived. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). Such parties shall file with the Clerk of Court, and serve on all Parties, the Judge, and the Magistrate, a written Motion to Review which shall specifically identify the portions of the proposed findings, recommendations, or report to which objection is made along with a memorandum of law setting forth the basis for such objection, (such parties shall file with the Clerk a transcript of the specific portions of any evidentiary proceedings to which an objection is made).

In the event a party files a Motion to Review the Magistrate's Findings, Recommendations and Report, all other parties shall respond to said Motion to Review within ten (10) days after being served a copy thereof.